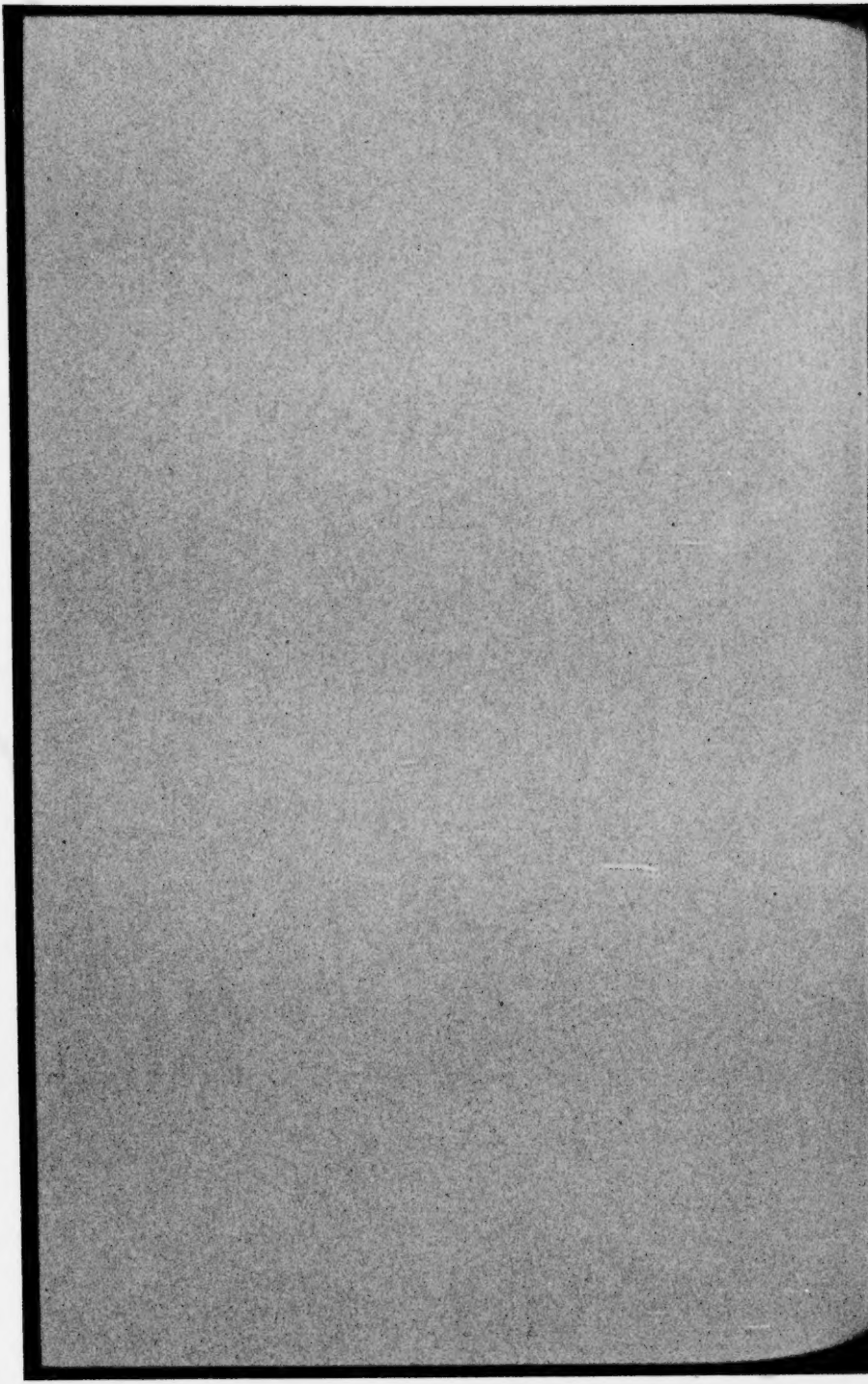

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. .....

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. RECONSTRUCTION FINANCE CORPORATION, ETC., AND 210 OTHER RELATORS,

Plaintiffs-Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, NELS H. OLSON, F. P. SIEBEL, SR., MRS. L. ROBERT MELLIN, MRS. W. F. HEINEMAN, WILSON FRANKLAND, SAMUEL LEVIN, JOSEPH W. CREMIN, WALTER TRUC, AND B. L. MAJEWSKI, AS MEMBERS, AND JAMES B. McCAHEY, AS MEMBER AND PRESIDENT,

Defendants-Respondents.

BRIEF IN SUPPORT OF PETITION.

Foreword.

The grounds on which the jurisdiction of this Court is invoked and a statement of when and how the jurisdictional questions were raised and what disposition was made of them by the Supreme Court of Illinois appear in detail in the petition for writ of certiorari to which this brief is annexed and we do not repeat them here. The questions presented for decision and a summary statement of the reasons advanced for the allowance of the writ also appear in the petition. This brief is submitted for the purpose of showing that the federal constitutional questions presented are substantial, that the Supreme Court of Illinois

has failed to decide federal constitutional questions specifically presented and which were necessary to a determination of the case, that it usurped judicial powers by going behind the decrees and retrying issues settled by the decrees, that it failed to accord these petitioners the benefit of rights established by their decrees, and that the result of its decision is a denial of substantial rights of the petitioners claimed under the Constitution of the United States.

Statement of the Case.

This is a mandamus proceeding to compel the Board of Education of the City of Chicago, Illinois, and its officers to do all acts and things imposed upon them by law to provide for the payment of decrees entered by the Circuit Court and the Superior Court of Cook County, Illinois, in accounting suits against said Board of Education in favor of these petitioners. There are two companion cases in which petitions for writs of certiorari are this day filed and which these petitioners and the petitioners in those cases ask be consolidated with this case. *Leviton* v. *Board of Education* (entitled in this Court, *F. J. Lewis, Petitioner*, v. *Board of Education and Frank C. Leviton*) is an injunction proceeding by a taxpayer of said school district to enjoin the issuance of judgment funding bonds to provide means for payment of a decree of another judgment creditor which is the same as those of petitioners, and *Hutchinson* v. *Board of Education* involves motions to vacate said decrees. So that this Honorable Court may have before it the whole picture as it was presented to the Supreme Court of Illinois and in order to make one brief serve to support the petitions in the three cases and avoid repetition of the facts common to all the cases, we state the facts in chronological order with appropriate references to the records in the three cases.

Where not otherwise indicated, the references will be to the record in this case.

Hutchinson v. *Board of Education* is one of the several accounting suits brought by holders of outstanding unpaid tax anticipation warrants, issued in 1929 by the Board of Education of the City of Chicago, against said Board of Education to recover their respective pro rata shares of the proceeds of collections of 1929 taxes against which said warrants were issued, which had been received by said Board to the use of said holders and which had not been paid to them. (R. 10.) The complaint in the *Hutchinson* case was filed September 29, 1936, (R. 1 in *Hutchinson* v. *Board*) and the decree was entered in that case April 13, 1938. (R. 11; also, R. 133 in *Hutchinson* v. *Board.*) There was no appeal from this decree and it became final thirty days after it was entered. November 19, 1942, said Board moved to vacate this decree and similar decrees entered against it in other suits and to dismiss the suits on the ground that the Supreme Court of Illinois in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497, decided after the decrees became final, had held that the decrees were void. (R. 48, 57; also, R. 176 in *Hutchinson* v. *Board.*) These motions were denied, the Board appealed in the seven cases and the appeals were consolidated for hearing. (R. 48; also, R. 182-183 in *Hutchinson* v. *Board.*) The Supreme Court of Illinois in the consolidated case, entitled *Chicago City Bank and Trust Company* v. *Board of Education*, 386 Ill. 508, 54 N. E. (2nd) 498, held that it had already decided in *Leviton* v. *Board of Education*, 385 Ill. 599, 53 N. E. (2nd) 596, that the decrees created no liability against the Board and could not be paid by it because of the limitations of Section 9 of Article IX of the State Constitution, and that the questions were moot, and dismissed the appeals in the several consolidated cases, including this case. Opinion, R. 185-196 in *Hutchinson* v. *Board.*

The background of this litigation appears from the record in the *Hutchinson* case. The Board of Education of the City of Chicago was created a body politic and corporate by the Act of April 20, 1917. (Laws of 1917, pp. 724-732; Smith-Hurd Stat. 1929, Chap. 122, Pars. 151-162 [Secs. 128-139 of School Act].) By that Act, it was placed under the control of a board of education and was given power to provide and manage the public school system of Chicago. (App. pp. 28-31.) Specifically, it was given power "when there is not sufficient money in the treasury to meet the ordinary and necessary expenses for educational and building purposes, to request the City Council, whose duty it thereupon shall be, to order issued warrants against and in anticipation of any taxes levied for the payment of the expenditures for educational and for building purposes to the extent of seventy-five per cent of the total amount of the taxes levied for such purposes; provided, however, that warrants drawn and issued under the provisions of this section shall show upon their face that they are payable solely from said taxes when collected, and not otherwise, and shall be received by any collector of taxes in payment of taxes against which they are issued, and such taxes against which said warrants are drawn shall be set apart and held for their payment." (Sec. 132; App. p. 29.) It is further provided that "All moneys raised by taxation for school purposes, * * * shall be held by the city treasurer, *ex-officio*, as school treasurer, in separate funds for school purposes, subject to the order of the board of education upon its warrants signed by its president and secretary and countersigned by the mayor and city comptroller," and that "The city treasurer shall, as school treasurer, secure and safely keep all such moneys, subject to the control and direction of said board of education." (Sec. 135; App. p. 30.) The Board is given broad powers for the establishment and maintenance of the public schools

of the City of Chicago and the Act provides generally that it shall exercise all the powers that may be requisite and necessary for its purposes. (App. p. 31.) The Board of Education of the City of Chicago is a body politic and corporate, separate from the City of Chicago, empowered to make contracts, require taxes to be levied for school purposes, issue tax anticipation warrants, and issue bonds, and is capable of suing and of being sued in any court of competent jurisdiction. (App. pp. 28-31.) See also, *Board of Education* v. *Upham*, 357 Ill. 263, 267, 191 N. E. 876, 878.

Pursuant to the authority granted by the statute creating it and enabling it to function as a public corporation, said Board in 1929 voluntarily and for its own benefit issued tax anticipation warrants against the taxes levied for 1929, and the petitioners are the owners and holders of some of those warrants. (R. 25, 33; also, R. 136-170 in *Hutchinson* v. *Board*.) Each warrant issued is signed by said Board of Education by its president and secretary and provides among other things: "The principal hereof and the interest hereon will be paid in lawful money of the United States of America from the proceeds of taxes when received, heretofore levied upon all of the taxable property in the City of Chicago for the year 1929 for educational [building] purposes. This warrant is issued in anticipation of said taxes so levied for the year 1929 for educational [building] purposes to provide a fund to meet and defray the ordinary and necessary expenses of the public schools of the City of Chicago and is payable, both principal and interest, solely from said taxes when collected and not otherwise, which taxes are hereby assigned and pledged to the payment of this warrant and of all warrants issued against and in anticipation of such taxes, the total of which warrants so issued does not exceed 75% of the tax levy made therefor and shall be received by any collector of taxes in payment of the taxes against which it was issued." (R. 15-17

in *Lewis* v. *Board.*) The statute places no duty on the treasurer with respect to tax anticipation warrants and he is not mentioned in the warrants here involved and had no contractual relations with the holders.

Pursuant to appropriate resolutions and ordinances and in strict accordance with the statute, said Board issued $63,175,000 of tax anticipation warrants for all purposes against the taxes levied for the year 1929. (R. 6, 48 in *Hutchinson* v. *Board.*) In making its levy the Board took into consideration the existing tax rate and the existing valuation of property in the district made by the regular quadrennial assessment in 1927. The Illinois State Tax Commission in 1928 ordered a reassessment of all real estate in Cook County and this delayed the extension of the 1929 taxes until the spring of 1931, two years after the warrants were issued. The reassessment resulted in a substantial reduction in the assessed valuation of taxable property in the district from that fixed by the regular 1927 quadrennial assessment in effect when the warrants were sold and there was no compensating increase in the rate at which taxes were to be extended. (R. 53-54 in *Hutchinson* v. *Board.*) The result was that at the time the 1929 tax levies were put in collection in the year 1931 the outstanding tax anticipation warrants issued in 1929 in compliance with the statutes against the 1929 tax levies, plus accumulated interest, exceeded the amount of the 1929 taxes which had been extended and which could be collected. As the proceeds of collections were received, the Board called for payment the outstanding warrants in the order of the numbers appearing on said warrants, and paid warrants in full to the exhaustion of the fund. (R. 25, 54, 63, 69, 134 in *Hutchinson* v. *Board.*) This left unpaid warrants of a face amount exceeding $10,000,000, which includes all warrants owned and held by these petitioners. (R. 25,

63, 65, 67 in *Hutchinson* v. *Board.*) Except for some small payments of interest made after the decision in *Board of Education* v. *Norfolk & Western Railway Co.*, 88 Fed. (2nd) 462 (C. C. A. 7th), and pursuant to a mandatory decree entered by the District Court on the mandate of the Circuit Court of Appeals, which are immaterial here, these petitioners have received no part of the proceeds of collections assigned and pledged to the payment of their warrants. (R. 105-107 in *Lewis* v. *Board.*)

The holders of the outstanding unpaid tax anticipation warrants brought suits for accounting (all on the same theory and substantially alike), alleging that their rights and interests were governed by the pertinent statutes in force at the time the warrants were issued and sold and by the contracts made by the Board of Education with such holders when they purchased the warrants. (R. 30-33 in *Hutchinson* v. *Board.*) The Board answered, averring that it had paid out all of the proceeds of collections of 1929 taxes and had nothing to distribute to the unpaid holders of tax anticipation warrants and that, under the decision of the Supreme Court of Illinois in *Berman* v. *Board of Education*, 360 Ill. 535, 196 N. E. 464, it was without constitutional authority to provide the means of accounting to the unpaid holders. (R. 75-76 in *Hutchinson* v. *Board.*)

There was an extended hearing and a decree was entered expressly finding all the issues against the Board and finding *inter alia* that said unpaid holders were entitled to the relief prayed and to recover of and from said Board of Education their respective pro rata shares of all moneys at any time received into the treasury of the Board as the proceeds of taxes collected on the tax levies of the said Board for school purposes for the year 1929 against which the tax anticipation warrants owned and

held by the plaintiffs in the accounting suits were issued, and it found that said Board had received into its treasury large amounts of money as the proceeds of such collections, that such funds should have been distributed pro rata among all the owners and holders of the outstanding warrants and not to some of them to the exclusion of others, that each tax warrant holder was entitled to receive his pro rata share, that the Board itself had appropriated and distributed such shares to others and that each unpaid holder was entitled to be reimbursed to the amount of his respective share. Money decrees were entered against the Board of Education for the respective pro rata amounts of the proceeds of the collections of the 1929 tax levies, with statutory interest. (Records: This case, pp. 23-25; *Lewis* case, pp. 47-50; *Hutchinson* case, pp. 133-175.)

After the decree was entered in the United States District Court for the Northern District of Illinois in *Norfolk & Western Railway Co.* v. *Board of Education*, and while the suits were pending in the Circuit Court and the Superior Court of Cook County, Illinois, but before decrees were entered in any of them, the Sixtieth General Assembly of Illinois, on July 12, 1937, passed an act authorizing the Board of Education of the City of Chicago to issue bonds to pay judgments (other than judgments for unpaid claims for school supplies, materials, or services rendered) which had been or which might be entered against it by courts of competent jurisdiction. (R. 37; App. pp. 31-32.) Pursuant to this statute, the Board, in September, 1939, sought to issue and sell $80,000 of its bonds for the purpose of paying the money decree obtained by F. J. Lewis, who is the petitioner in *Leviton* v. *Board of Education*, this day filed. (R. 42.) November 16, 1939, Frank C. Leviton, as a taxpayer, commenced his suit to enjoin the issuance of these bonds on the ground that the proceeds of the bonds were

to be used for the payment of a non-corporate obligation in violation of Section 9 of Article IX of the State Constitution. (R. 43; also, R. 1-15 in *Lewis* v. *Board.*) The motion of the Board to dismiss this complaint was sustained by the Circuit Court of Cook County, Illinois, and the suit was dismissed. (R. 43; also, R. 51 in *Lewis* v. *Board.*) On appeal, this decree was reversed. (App. pp. 1-11; *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497.)

When the case was redocketed in the Circuit Court, F. J. Lewis was allowed to intervene and answer the complaint on the ground that his decree in the accounting suit, entered against said Board April 1, 1939, was in jeopardy in the injunction proceeding between the Board and its taxpayers and that the interests of both the Board and its taxpayers were adverse to his interests. (R. 51-57 in *Lewis* v. *Board.*) By his answer he averred that his money decree was a valid and binding obligation of the Board and that to permit the taxpayers to maintain the injunction proceeding would substantially impair his decree and render it worthless, thereby depriving him of his property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States. (Ibid. R. 57-67.) Upon the conclusion of the hearing in the injunction proceeding, the Circuit Court, feeling itself bound by the dicta in the opinion in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497, enjoined the Board from issuing and selling the bonds to provide the means to pay the Lewis decree. (Ibid. R. 93-94.) Lewis appealed and in his brief attacked the opinion filed in the first appeal sentence by sentence, (see Lewis Brief, pp. 74-105, certified here,) pointing out that the Supreme Court of Illinois had based its opinion on assumed facts not supported by the record, and had disregarded the settled law of Illinois and had rested its decision on *Berman* v.

Board, 360 Ill. 535, 196 N. E. 464, a case presenting entirely different questions. Notwithstanding his appeal for a hearing on constitutional rights asserted, the decree enjoining payment of his decree was affirmed. *Leviton* v. *Board of Education*, 385 Ill. 599, 53 N. E. (2nd) 596; App. pp. 12-21.

Reconstruction Finance Corporation and other judgment creditors of said Board of Education, none of whom was a party to the *Leviton* case but whose decrees were put in jeopardy by this collateral attack upon the Lewis decree, filed this proceeding for a writ of mandamus in the Circuit Court of Cook County, Illinois, November 13, 1942. (R. 1.) There is no contention that the decrees entered in the accounting suits were not entered by courts of general jurisdiction in adversary proceedings upon appropriate pleadings and after a full hearing in which all interested parties participated, and in which all the defenses on the merits again raised by the Board in these mandamus proceedings, and all other pertinent questions were heard and decided. (R. 19, 49.) Notwithstanding this situation, the Supreme Court of Illinois in *People ex rel. Reconstruction Finance Corporation* v. *Board of Education*, 386 Ill. 522, 54 N. E. (2nd) 508, (R. 66-76), held that because the plaintiffs in the accounting suits were holders of unpaid tax anticipation warrants and their cause of action arose out of the fact that they did not receive their share of the proceeds of the collections of the taxes against which their warrants were issued, the decrees were not enforceable against the Board of Education, and denied to the petitioners the only remedy available to them.

Counsel for these petitioners and others similarly situated, in the briefs in this group of cases, (certified here for this Court's inspection,) and particularly in the briefs and the petition for rehearing in the *Leviton* case, which was decided at a term of the Court preceding the term at

which the case of these petitioners was decided, pressed upon the Supreme Court of Illinois their contentions that their property was being taken without due process of law and that they were being denied the equal protection of the law, in violation of the provisions of Section 1 of Amendment XIV of the Constitution of the United States, and cited in support of these contentions decisions of this Court, of the Supreme Court of Illinois, and of the courts of last resort of other American jurisdictions, but these contentions and the authorities cited were wholly disregarded by the Supreme Court of Illinois, and, upon an assumption of facts contrary to the record and upon theories not advanced by counsel for any of the parties, the Court entered a judgment which has taken from these petitioners' property which belongs to them and no one else and has given it to the Board of Education of the City of Chicago and others and has denied them compensation in any form.

ARGUMENT.

These petitioners submit that the obvious result of the decision and judgment of the Supreme Court of Illinois is to deprive them of their property without due process of law and to deny them the equal protection of the law as guaranteed to them by Amendment XIV to the Constitution of the United States, when it is considered that that Court has refused to pass upon the validity and conclusiveness of petitioners' decrees against the Board of Education in the accounting suits, and has usurped judicial authority by going behind the decrees, and has destroyed the value of these decrees by refusing to petitioners their only remedy for enforcing them, and has denied to these petitioners the rights vested in them by their decrees, and has relieved the Board of Education of the obligations fixed against it by the decrees.

The mere fact that there is notice and opportunity to be heard is not due process of law, if the necessary result of the judgment entered is to deprive petitioner of his property without compensation or is otherwise inconsistent with the Fourteenth Amendment. (*Oregon R. & N. Co.* v. *Fairchild*, 224 U. S. 510, 524, 528; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 235.) Regard must be had to substance and not just to form to assure due process. (*Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 678; *C. B. & Q. R. Co.* v. *Chicago*, 166 U. S. 226, 234.) It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect federal constitutional rights cannot be declined when it is plain that the fair result of a decision of a State court is to deny such rights. *Rogers* v. *Alabama*, 192 U. S. 226, 230.

A decree is property and a denial of the only remedy for the enforcement of the decree deprives the holder of his property without due process of law.

Petitioners' decrees were duly entered by courts of competent jurisdiction in adversary proceedings where the Board of Education availed itself of the opportunity to present all of its defenses, and the indebtedness of the Board of Education was conclusively established by said decrees. This indebtedness is absolute. There can be no further inquiry into the validity of the claims on which the money decrees were entered. (*United States* v. *New Orleans*, 98 U. S. 381; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *Santa Fe County* v. *Coler*, 215 U. S. 296, 302; *Moore* v. *Town of Browning*, 373 Ill. 583, 585, 27 N. E. (2nd) 533, 535; *City of Cairo* v. *Campbell*, 116 Ill. 305, 308, 5 N. E. 114; *Town of Lyons* v. *Cooledge*, 89 Ill. 529, 534.) When there has been a final adjudication of private rights and these rights have passed into a decree, they become absolute and are immune to collateral attack. (*Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421, 431.) Such a decree is as much an article of property as anything else that a person owns and is as much protected by the Fourteenth Amendment as any other property. (*Collins* v. *Welsh*, 75 Fed. (2nd) 894, 897, (C. C. A. 9th); *Penn. Co.* v. *Scott*, 346 Pa. 13, 29 Atl. (2nd) 328, 329; *Casieri's Case*, 286 Mass. 50, 190 N. E. 118, 120; *Gilman* v. *Tucker*, 128 N. Y. 190, 28 N. E. 1040, 1043.) For the State, through any of its agencies, to abrogate all remedies for enforcing such a decree is to deprive the owner of his property without due process of law. (*Louisiana* v. *Pillsbury*, 105 U. S. 278, 301; *Hodges* v. *Snyder*, 261 U. S. 600, 603.) An essential part of every judgment passed by a court exercising judicial power is the right to enforce and give it effect. (*District of Columbia* v. *Eslin*, 183 U. S. 62, 65.) The remedy for enforcing a decree is just as much the life of the

decree as the remedy for enforcing a contract is the life of the contract.

When the Supreme Court of Illinois relieved the Board of Education of its obligation fixed by petitioners' decrees, it took the property of petitioners and gave it to others and thereby deprived petitioners of their property without due process of law.

It is the settled law of Illinois that a judgment or decree against a public corporation is a corporate obligation and that there is no escape from making provision for discharging the obligation. (*People* v. *Cairo*, 50 Ill. 154, 165; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 278, 183 N. E. 233, 235; *People* v. *Village of Bradley*, 367 Ill. 301, 305, 11 N. E. (2nd) 415, 418.) The discharge of its duty to pay such an obligation is not prohibited to such public corporation by Section 9 of Article IX of the Constitution of Illinois, (*Drainage Com'rs* v. *Rector Drainage Dist.*, 266 Ill. 536, 540, 107 N. E. 895, 897) and it would be no defense to a denial of rights guaranteed by the Fourteenth Amendment to the Constitution of the United States if it did. *McCullough* v. *Virginia*, 172 U. S. 102, 123; *C. B. & Q. R. Co.*, v. *Chicago*, 166 U. S. 226, 239; *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421, 431.

When the Supreme Court of Illinois refused to grant to these petitioners their only remedy to enforce their decrees against the Board of Education, it relieved the Board of liability to account for the property of these petitioners which it received to their use, as conclusively established by the decrees. The proceeds of collections of the anticipated, assigned and pledged taxes, when received into the treasury of the Board of Education was the property of these petitioners which the Board had, by its contract with the tax anticipation warrant holders, pledged itself to set apart and hold for the payment of

their warrants. When the Supreme Court of Illinois went behind the decrees entered in the accounting suits, which conclusively fixed the indebtedness of the Board of Education, and held that the decrees should not have been entered and that they were unenforceable, it took the property of these petitioners and gave it to the Board of Education. It is difficult to conceive of a more clear example of depriving one of property without due process of law. *Thompson* v. *Consolidated Gas Utilities Co.*, 300 U. S. 55, 78-80; *C. St. P. M. & O. Ry. Co.* v. *Holmberg*, 282 U. S. 162, 167; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403, 417.

The clear result of the decision of the Supreme Court of Illinois is the taking of the property of these petitioners and giving it to the other warrant holders who received more than their share of the proceeds of collections, which is exactly what the Fourteenth Amendment to the Constitution of the United States is designed to prevent. *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403, 417; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161; *Panhandle Co.* v. *State Highways Com.*, 294 U. S. 613, 618.

When the Supreme Court of Illinois went behind the decrees of these petitioners, which had conclusively established the liability of the Board of Education to account to them, and in effect excused the Board from its liability to restore to petitioners the property of petitioners which it had taken into its control and disbursed to others, the Supreme Court of Illinois deprived petitioners of their property without due process of law.

Whether the Board of Education was under any duty to see that the proceeds of collection of anticipated, assigned and pledged taxes were distributed to the warrant holders as their interest appeared, the fact is that the

Board of Education took control of the private property of these warrant holders, disbursed it to others and interfered with their receiving what belonged to them. The prohibition of the Fourteenth Amendment of the seizure of or interference with private property by the State or any of its agencies applies as well where the seizure or interference is the result of a misuse or abuse of power as where it is the result of the regular exercise of power. (*Home Tel. & Tel. Co.* v. *Los Angeles,* 227 U. S. 278, 287; *Raymond* v. *Traction Co.,* 207 U. S. 20, 35.) The Board of Education, in taking control of and disposing of the private property of these petitioners, was exercising a power expressly granted by the School Act which required that "All moneys raised by taxation for school purposes, * * * shall be held by the city treasurer, *ex officio,* as school treasurer, * * * subject to the order of the board of education," and that "The city treasurer shall, as school treasurer, secure and safely keep all such moneys, subject to the control and direction of said board of education." (Sec. 135, App. p. 30.) Whatever right the Board of Education may have had to free itself from the task of seeing that the warrant holders became possessed of the proceeds of tax collections which had been assigned and pledged to them by the Board, the fact is that the Board, in the exercise of powers granted it by statute took control of and possessed itself of the private property of these petitioners and without their authority appropriated it and disbursed it to others.

Under a substantially identical situation this Court in *Ward* v. *Love County,* 253 U. S. 17, 24, held that the public corporation received tax moneys for the use and benefit of the claimants and that it could not lessen its liability to account by showing that it had paid over to others a portion of the moneys which belonged to claimants. In *C. B. & Q. R. Co.*

v. *Chicago*, 166 U. S. 226, 239, this Court, in holding that the Fourteenth Amendment protects the property of citizens from any interference or appropriation by the State or any of its agencies quoted with express approval the following from *Scott* v. *Toledo*, 36 Fed. 385, 395: "* * * any attempt so to do, whether done in pursuance of a constitutional provision or legislative enactment, whether done by the legislature itself or under delegated authority by one of the subordinate agencies of the state, and whether done directly, by taking the property of one person and vesting it in another or the public, or indirectly through the forms of law, by appropriating the property and requiring the owner thereof to compensate himself, or to refund to another the compensation to which he is entitled, would be wanting in that 'due process of law' required by said amendment. * * *, no matter under what form of procedure it is taken, [it] would violate the provisions of the federal constitution."

This constitutional right to compensation was an issue before the Circuit Court in the accounting suit and was conclusively settled in favor of petitioners by the decree of the Circuit Court, as were all other rights within the issues in that suit.

The Supreme Court of Illinois, by its judgment denying to these petitioners their only remedy for the enforcement of their decrees, has placed its judicial sanction on the action of the Board of Education in appropriating the private property of these petitioners without compensating them in any manner. The private rights of these petitioners in their property protected by the Fourteenth Amendment became absolute when the decrees entered in the accounting suits became final. Under the established law nothing that contradicted the record of these decrees could be set up as a defense in this mandamus proceeding. (*Harshman* v. *Knox County*, 122 U. S. 306, 318;

Nugent v. *Toman*, 372 Ill. 170, 175, 23 N. E. (2nd) 43, 45; *Drainage Dist.* v. *Highway Com'rs.* 238 Ill. 521, 524, 87 N. E. 394, 395.) The right of these petitioners to process to enforce their private rights was vested and absolute. (*McCullough* v. *Virginia*, 172 U. S. 102, 123; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721.) When the rights of these petitioners were denied to them by the judgment of the Supreme Court of Illinois they were deprived of their property without due process of law in violation of Section 1 of Amendment XIV to the Constitution of the United States.

When the right to review the decrees of these petitioners no longer existed, it was a usurpation of judicial authority to go behind the decrees and retry the issues settled by the decrees.

The Supreme Court of Illinois, while asserting its intention not to pass upon the question of whether the decrees entered in the accounting suits were valid and while asserting that it was not permitting a collateral attack upon the decrees, (R. 72) proceeded to go behind the decrees, which had become final and were no longer reviewable, and to examine at length into the claims upon which the decrees were entered. (R. 70-73.) Although it appeared from the face of the decrees that the claims upon which the decrees were entered had been finally adjudicated against the Board of Education by courts of competent jurisdiction, the Supreme Court found that the factual and legal basis of the decrees were the same as the substantially identical decree in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497, (App., p. 1), applied the decision in that case as binding in the case at bar, and held that for the reasons stated in the opinion in that case such claims were not valid claims against the Board and that the decrees should never have been

entered. (R. 72.) Thereupon, the Court held that the rights of petitioners as tax anticipation warrant holders were merged in the decrees upon their entry; (R. 73) and that therefore the Court would not permit the decrees to be enforced against the Board because to do so would in effect enforce against the Board claims which the Court would not have sustained had the decrees been directly appealed. (R. 75.)

The Court brushed aside a large number of cases relied upon by petitioners holding this to be a collateral attack, by the misstatement that in all of them power existed on the part of the municipality to create the debt or claim upon which the judgments involved were based. (R. 74.) Instead of applying the authorities in point, cited to it in the briefs of the parties, in deciding the case before it, the Court relied upon *Brownsville* v. *Loague*, 129 U. S. 493 and other similar cases, (R. 73) none of which had been cited in the brief of the Board of Education. In *Brownsville* v. *Loague*, judgment creditors relied for the remedy to enforce their final judgments, not upon the judgments themselves alone, as do petitioners in the case at bar, but upon a special taxing power or remedy granted by a statute pursuant to which were issued the securities upon which the judgments were entered. (R. 83-85.) This case is clearly distinguishable from the case at bar. It has never been applied to a fact situation like that now before the Court.

An attack upon a decree made in a proceeding other than that in which the decree was rendered, in order to be successful, must be grounded either upon a showing that the court assuming jurisdiction had no legal existence or power to act in the judgment proceeding or that in giving the particular decision it was acting outside the jurisdiction conferred upon it. (Freeman on Judgments, 5th Ed.

Vol. I, Sec. 373, p. 780.) Any assault other than one on the jurisdiction of the court entering the decree is a collateral attack when made in resistance to a mandamus proceeding brought to enforce the decree. (*Cromwell* v. *County of Sac*, 94 U. S. 351, 352; *Harshman* v. *Knox County*, 122 U. S. 306, 318; *People* v. *Village of Bradley*, 367 Ill. 301, 305, 11 N. E. (2nd) 415, 418; *Knaus* v. *Chicago Title & Trust Co.*, 365 Ill. 588, 591, 7 N. E. (2nd) 298, 300; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 277, 183 N. E. 233, 235.) It was a usurpation of judicial authority for the Supreme Court of Illinois to go behind the decrees entered in the accounting suits to determine whether they should have been entered. (*Voorhees* v. *Bank of United States*, 35 U. S. 449, 473; *Buckmaster* v. *Jackson*, 4 Ill. 104, 111.) In the *Voorhees* case this Court said (p. 473):

> "If the principle once prevails, that any proceeding of a court of competent jurisdiction can be declared to be a nullity by any court, after a writ of error or appeal is barred by limitation, every county court, or justice of the peace in the union, may exercise the same right, from which our own judgments or process would not be exempted. The only difference in this respect between this and any other court is, that no court can revise our proceedings; but that difference disappears, after the time prescribed for a writ of error or appeal to revise those of an inferior court of the United States or of any state: they stand on the same footing in law. The errors of the court do not impair their validity: binding till reversed, any objection to their full effect, must go to the authority under which they have been conducted."

When the Supreme Court of Illinois usurped judicial authority and destroyed the property of these petitioners in their decrees it denied the protection afforded by the Fourteenth Amendment.

The Supreme Court of Illinois decided a case which was not presented by the records or by the briefs of the parties and refused to decide the questions necessary to a determination of the rights of these petitioners.

The starting point for all the decisions in this group of cases is *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497. (App. 1.) In that case the only issue before the Court was whether the complaint of the taxpayer of the school district, seeking an injunction to restrain the Board of Education from issuing judgment funding bonds, stated a cause of action. Contrary to the allegations of the complaint and to the findings of the decree, (R. 8, 47 in *Lewis* v. *Board*) the Supreme Court stated in its opinion, "The judgments thus rendered either had the twenty-nine warrants as a basis of liability or the breach of duty by an officer of a quasi municipal corporation as a basis of liability, neither of which could create one under the constitution." (App. p. 7-8.) Neither statement was true, as is clear from an examination of the pleadings and the decrees entered in the accounting suits, (R. 30-35, 37-41, 133-176 in *Hutchinson* v. *Board*) and of the complaint in the *Leviton* suit, (R. 8, 47 in *Lewis* v. *Board*) but the whole series of cases, including this mandamus proceeding, has been decided on this false premise.

It was never contended by the petitioners in the accounting suits that the officers of the Board owed them any duty or committed any breach of duty, nor did petitioners ever contend that the Board was liable on the warrants according to their terms. The petitioners base their claims solely on the agreement of the Board, expressed and implied, to account for the moneys received by the Board to their use, and at no time asked that the Board account to them for moneys which did not already belong to them and which were received into the

Board's treasury and held under its control. Notwithstanding this misstatement of the character of the accounting suits was pointed out to the Supreme Court in great detail in the brief of the holder of the decree there involved, filed in the second appeal (Lewis Brief, certified to this Court, pp. 80, 86, 89, 92, 93, 96, 98) the Supreme Court of Illinois, in its second opinion in the *Leriton* case persisted in the misstatement of the character of the accounting suits. (App. p. 18.) The same false construction of the complaints in the accounting suits is carried into the opinion in the instant case. (R. 72-73.)

This Court is not bound by the false premise assumed by the Supreme Court of Illinois. It will determine for itself the nature of the action in which petitioners' decrees were entered, the issues presented and decided in these proceedings, and the conclusiveness of the decrees entered. (*Truax* v. *Corrigan*, 257 U. S. 312, 324; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 508; *Rogers* v. *Alabama*, 192 U. S. 226, 230; *Scott* v. *McNeal*, 154 U. S. 34, 45.

When it is determined, as we submit it must be, that the Supreme Court of Illinois has set up a straw man and knocked it down and has failed or refused to decide the lawsuit presented for decision, it will appear that the result of its decision is a denial to these petitioners of their day in court and as a consequence a denial to them of the protection of the Fourteenth Amendment.

The Supreme Court of Illinois refused to decide whether petitioners' decrees were valid and whether the indebtedness decreed was absolute and so denied to these petitioners a determination of a question essential to the establishment of rights claimed by them under the Constitution of the United States.

Whether these petitioners are entitled to the writ of mandamus to compel the corporate authorities of the Board

of Education to make provision for the payment of their money decrees cannot be determined without determining whether they hold valid decrees against the Board of Education. If the decrees held by these petitioners are valid, then they are corporate obligations and there is no escape under the law from granting these petitioners the relief they seek. *United States* v. *New Orleans*, 98 U. S. 381, 395; *People* v. *L. & N. R. R. Co.*, 350 Ill. 274, 278, 183 N. E. 233, 235; *Drainage Commrs.* v. *Rector Dr. Dist.*, 266 Ill. 536, 540, 107 N. E. 895, 897; *City of Cairo* v. *Campbell*, 116 Ill. 305, 308, 5 N. E. 114, 115.

A valuable property right in a decree is the right to have it enforced. This right to the enforcement of the decree is an integral part of every valid decree and to deny the only remedy available for its enforcement is to deprive the holder of his property without due process of law. (*Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 682; *Dist. of Columbia* v. *Eslin*, 183 U. S. 62, 65; *Louisiana* v. *Pilsbury*, 105 U. S. 278, 301; *Wolff* v. *New Orleans*, 103 U. S. 358, 368.) It is just as much a denial of due process of law to refuse to decide a federal constitutional question presented as to decide it erroneously. (*Chapman* v. *Goodnow's Adm'r*, 123 U. S. 540, 548.) The Fourteenth Amendment assures to the citizen the privilege of having his federal constitutional rights and immunities judicially declared and protected when properly invoked and this Court has the province to inquire whether the decision of the State court rests upon a fair and substantial basis or one merely illusory and plainly untenable. (*Lawrence* v. *State Tax Com.*, 286 U. S. 276, 282; *Ward* v. *Love County*, 253 U. S. 17, 22.) We think it clear that the holding of the Supreme Court of Illinois (R. 72) that it is not necessary to determine the validity of the decrees of these petitioners in order to determine their property rights in their decrees, is pure sophistry.

The Supreme Court of Illinois has arbitrarily refused to these petitioners the advantage of and redress afforded by the principles of law and presumptions and the remedies which it has heretofore afforded to all litigants in like circumstances and having claims substantially identical with those of these petitioners, and so has denied them the equal protection of the law.

The Fourteenth Amendment requires that all persons shall have like access to the courts of the country for the protection of their property, the redress of their wrongs and the enforcement of their rights. (*Barbier* v. *Connolly*, 113 U. S. 27, 31; *Truax* v. *Corrigan*, 257 U. S. 312, 334; *Pierre* v. *Louisiana*, 306 U. S. 354, 358.) Prior to its decisions in this group of cases, the Supreme Court of Illinois, in line with the established law in all American jurisdictions, had held that a final decree duly entered by a court of competent jurisdiction was conclusive of every question within the issues (*People* v. *Village of Bradley*, 367 Ill. 301, 305; *Knaus* v. *Chicago Title & Trust Co.*, 365 Ill. 588, 592; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 277; *Marabia* v. *Thompson Hospital*, 309 Ill. 147, 157; *Miller* v. *Rowan*, 251 Ill. 344, 348; *Ward* v. *Field Museum*, 241 Ill. 496, 509; *Healy* v. *Deering*, 231 Ill. 423, 431; *Carney* v. *Village of Marseilles*, 136 Ill. 401, 407; *Harmon* v. *Auditor*, 123 Ill. 122, 133; *Iverson* v. *Loberg*, 26 Ill. 180, 182; *Swiggart* v. *Harber*, 5 Ill. 364, 371); that such a decree could not be collaterally questioned except on jurisdictional grounds (*People* v. *Lewe*, 380 Ill. 531, 535; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 278; *Sheahan* v. *Madigan*, 275 Ill. 372, 377; *O'Connor* v. *Board of Trustees*, 247 Ill. 54, 59); that such a decree could not be modified, vacated or reversed after the statutory period within which such action might be taken had expired (*Anderson* v. *Anderson*, 380 Ill. 435, 438; *Knaus* v. *Chicago Title & Trust Co.*, 365 Ill. 588, 592; *Tosetti* v. *Kohler*, 200 Ill. 369, 372; *Lilly* v. *Shaw*, 59 Ill. 72, 77; *Cook* v. *Wood*, 24 Ill. 295, 298; *Buck-*

master v. *Jackson*, 4 Ill. 104, 107, 111; *Morgan* v. *Hays*, 1 Ill. 126, 127); and that such a decree entered against a public corporation is conclusive of the liability of such corporation and is a corporate obligation, the payment of which the courts will enforce by the writ of mandamus. (*Elmhurst Bk.* v. *Vil. of Bellwood*, 372 Ill. 204, 205; *People* v. *Village of Bradley*, 367 Ill. 301, 305; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 277; *Drainage Com'rs.* v. *Rector Drainage Dist.*, 266 Ill. 536, 540; *Carney* v. *Village of Marseilles*, 136 Ill. 401, 407; *Town of Lyons* v. *Cooledge*, 89 Ill. 529, 534; *People* v. *City of Cairo*, 50 Ill. 154, 165.) In this case and the companion cases, the Supreme Court of Illinois denied to these litigants the remedies afforded to other litigants in like circumstances and having claims substantially identical with those of these petitioners, and deprived them of their vested property rights in their decrees, and as a consequence denied them the equal protection of the law.

An early case in Illinois which holds that neither a quasi-municipal corporation nor any other public body against whom a judgment has been rendered can, in a mandamus proceeding to compel it to provide for the payment of that judgment, go behind it and question the sufficiency of the cause of action upon which it is predicated, is *Town of Lyons* v. *Cooledge*, 89 Ill. 529. In that case the Town sought to defend against the petition for the writ of mandamus on the ground that the claim upon which the judgment was obtained in the Superior Court of Cook County was unjust and fraudulent in character; that it was the result of collusion between the claimant and the supervisor of the town; that the highway commissioners had no authority to make the contract out of which the claim arose; and that an injunction had been entered prior to the obtaining of the judgment which enjoined the collection of a town tax to pay the claim upon which the judgment was based. A writ of mandamus was ordered

by the Circuit Court of Cook County and the Supreme Court of Illinois affirmed the judgment holding (p. 534) that the judgment was not void however erroneous it may have been and that while it was probable that the judgment would have been reversed on appeal, still it was not a nullity subject to collateral attack.

A case which appears to us to be decisive of the rights of these petitioners to the relief as prayed is *Moore* v. *Town of Browning*, 373 Ill. 583, 27 N. E. (2nd) 533. In this case Moore recovered a judgment against the Town of Browning, a quasi-municipal corporation, and the judgment not having been paid, he filed his petition for a writ of mandamus against the Town to require it to levy a tax to pay the judgment. The Town in its answer to the petition attempted to raise the question of the sufficiency of the complaint on which the judgment was obtained, on the ground that the claim alleged therein was not a corporate obligation. The answer was stricken on motion and the writ awarded. In affirming the judgment awarding the writ, the Supreme Court of Illinois said (p. 585-586):

> "Appellant here attacks the original declaration in assumpsit against it on which this judgment was rendered, declaring that that declaration did not state a cause of action and that the due process clause of the constitution was violated by the entry of the judgment, and that this being so, *mandamus* should not be granted. Appellant's attack on the sufficiency of the declaration in the original assumpsit suit against it, is collateral. It is conceded on this record that the court had jurisdiction of the parties, and, of course, it must be conceded that it had jurisdiction of the class of cases to which the suit belongs. Jurisdiction is the power to hear and determine the subject matter in the controversy between the parties to the suit. Whether a declaration in a case of which the court has jurisdiction states a cause of action has no important bearing on the question of jurisdiction

of the court of the class of the case. The declaration stated a case of the general class over which the authority of the court extended, and the court had jurisdiction.

* * * * *

"The court, in the original lawsuit, having had jurisdiction of the parties and the subject matter, its judgment cannot be questioned in a collateral proceeding.

"When the judgment was rendered against the appellant township it was the duty of its board of auditors to audit the judgment, allow it as a claim against the township and levy a tax to pay the amount due."

The cases of these petitioners cannot be distinguished from these cases and other cases cited in this argument. The Supreme Court of Illinois did not undertake to distinguish them. It ignored them, notwithstanding these petitioners pressed them upon the attention of the Court in their printed briefs and in oral argument. It is evident that the Court did not intend to overrule these cases. If these petitioners had proved their titles to their respective claims allowed in the accounting suits by any other muniments than the contracts with the Board of Education (called tax anticipation warrants for want of a better name) the Supreme Court would have held, in line with the established law, that the decrees were conclusive of all questions within the issues in the accounting suits and that these decrees were corporate obligations of the Board and that the Board could not escape making provision for their payment. Because petitioners prove their title to their property by a muniment labeled "tax anticipation warrant" the Supreme Court of Illinois erects an unheard-of rule that the decrees obtained in their accounting suits, even though valid and subsisting, are unenforceable against the Board, and denies these

petitioners the only remedy available to them. There would be just as much reason in a pronouncement that decrees held by white men will be enforced, but decrees held by negroes are unenforceable. This capricious and arbitrary action of the Supreme Court of Illinois is not mere error decision or mere failure to follow its own precedents, but it is an application of a special rule of decision to these litigants and results in a denial of the equal protection of the law. *Truax* v. *Corrigan,* 257 U. S. 312, 334; *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369, 374; *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 559; *Pierre* v. *Louisiana,* 306 U. S. 354, 358.

The sustaining of the defense of the Board of Education of its present inability to levy taxes to pay petitioners' decrees as an additional ground of its decision, after the Supreme Court of Illinois had held that the decrees were not corporate obligations of the Board of Education and could not be enforced against it, without regard to the financial condition of the Board, was not an independent ground of decision of sufficient breadth to sustain the judgment of that Court without a decision of the federal constitutional questions.

The Board of Education, by its answer, challenged the validity of the decrees obtained against it by petitioners in their accounting suits and asked that they be held void under the authority of *Leviton* v. *Board of Education,* 374 Ill. 594, 30 N. E. (2d) 497. (R. 41, 43, 48-50.) As an alternative defense the Board averred that the taxes which it was permitted to levy under existing statutes were barely sufficient to maintain the public schools and that it did not have the present ability to levy additional taxes necessary to pay petitioners' decrees. (R. 52-56.) The Board of Education admitted the existence of the Act of July 12, 1937, which authorized it to issue bonds to pay

judgment indebtedness, but averred that the Supreme Court of Illinois, by its decision in *Leviton* v. *Board of Education,* 374 Ill. 594, had held that it could not issue bonds to pay the decrees entered in the accounting suits. (R. 50-51.) The effect of the answer of the Board is that it has the means to provide for the payment of petitioners' decrees, if it may issue bonds pursuant to the authority granted by the Act of July 12, 1937, but that it does not have the ability to provide funds for the payment of these decrees unless it can exercise the authority granted to it by said Act. The real issue between petitioners and the Board of Education in the mandamus proceeding was the validity of the decrees, the petitioners contending that they were valid subsisting corporate obligations of the Board of Education, and the Board contending that they were void.

The Supreme Court of Illinois specifically declined to determine the validity of the decrees, saying: "The judgment decree shows upon its face that it never should have been entered, because of the reasons set out in *Leviton* v. *Board of Education,* 374 Ill. 594, but it is not now necessary to determine the validity of such judgment in disposing of the real issue of whether the board of education can be compelled by mandamus to levy a new tax to pay judgments showing upon their face that to compel such act will require the board to violate the constitution." (R. 72.) The Court said further: "The nature and character of the plaintiff's claim being fully disclosed upon the face of the judgment, and indicating facts which would require the officers to violate the constitution in order to levy a tax for its payment, *mandamus* may properly be refused, not because we invalidate the judgment, but because we cannot require public officers to violate the provisions of the constitution. The alternative prayer that the board be required to do all things necessary to issue

bonds under the Judgment Refunding Act of 1937 requires no comment, because of our holding that it is unconstitutional. *Leviton* v. *Board of Education*, No. 27496." (R. 75.)

After the Supreme Court of Illinois had refused to determine the validity of petitioners' decrees, an issue squarely presented and a question vital to the rights of petitioners as the holders of the decrees, but had held that the Board of Education could not, by the levying of taxes or by the issuing of bonds, provide the means for the payment of the decrees, thereby destroying the value of the decrees and depriving these petitioners of their property rights in the decrees (R. 72-75), it added as a mere make-weight that another ground for denying the only remedy available to petitioners was the present inability of the Board to provide for the payment of the judgments by a levy of taxes in addition to the levy required for educational purposes. (R. 75.)

It is for the State courts to determine the adjective as well as the substantive law of the State, but they must, in so doing, accord the parties the rights guaranteed to them by the Fourteenth Amendment. (*Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 682.) Although this Court will in all cases accord respectful consideration and great weight to the views of the State's highest court, still, in order that the rights, privileges, and immunities guaranteed to citizens by the Constitution of the United States may not become a dead letter, this Court is not bound to accept the decisions of the State court, even on matters primarily of State law, where there is raised and presented to said Court the question of whether the decision of or the course of proceedings in the State court has in fact or effect denied or impaired or violated the constitutional rights of the parties. (*Indiana* v. *Brand*, 303 U. S. 95, 100; *Coombes* v. *Getz*, 285 U. S. 434, 441; *Rogers* v. *Alabama*, 192 U. S.

226, 230.) In such case this Court will decide for itself, independent of the State court, all questions involved in the case, including questions of State law (*Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 508) irrespective of the character of those questions as factual, (*Truax* v. *Corrigan*, 257 U. S. 312, 324) procedural, (*N. Y. C. R. R. Co.* v. *N. Y. & Pa. Co.*, 271 U. S. 124, 126; *Davis* v. *Wechsler*, 263 U. S. 22, 24-25) or substantive, (*Coombes* v. *Getz*, 285 U. S. 434, 441; *Scott* v. *McNeal*, 154 U. S. 34, 45) and irrespective of the disposition that may be made of the federal questions, or whether it be found necessary to decide them at all. *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 508.

While this rule has been applied most frequently in cases involving questions of impairment of obligation of contract, it extends over, applies to and embraces all manner of cases involving impairment or denial by the State of the rights, privileges and immunities guaranteed citizens by the Fourteenth Amendment. (*Rogers* v. *Alabama*, 192 U. S. 226, 230; *Scott* v. *McNeal*, 154 U. S. 34, 45.) In speaking of this subject as early as *Gelpcke* v. *City of Dubuque*, 68 U. S. 175, 206, this Court pointed out that "* * * there has been heretofore, in the judicial history of this court, as doubtless there will be hereafter, many exceptional cases. We shall never immolate truth, justice, and the law, because a State tribunal has erected the altar and decreed the sacrifice."

Where the State court undertakes to decide the case on non-federal grounds and the non-federal ground of decision is unsubstantial, unfounded or illusory, this Court has jurisdiction. (*Enterprise Irrigation Dist.* v. *Canal Co.*, 243 U. S. 157, 164; *Broad River Power Co.* v. *South Carolina*, 281 U. S. 537, 540.) Also where the non-federal question is so interwoven with federal questions as not to be independent, or where it is not of sufficient breadth to sustain the judgment of the State court without a deci-

sion of the federal questions, the jurisdiction of this Court is clear. (*State Tax Com.* v. *Van Cott*, 306 U. S. 511, 514; *Anderson* v. *Carkins*, 135 U. S. 483, 486.) Non-federal grounds of decision, plainly untenable, may not be successfully put forward by a State court in the face of claim in that court of substantial federal constitutional rights, so as to deprive this Court of jurisdiction to review the judgment of the State court and to insure to all litigants the rights and protection afforded them by the Constitution of the United States. *Ward* v. *Love County*, 253 U. S. 17, 22; *Terre Haute, etc. R. Co.* v. *Indiana*, 194 U. S. 579, 589.

There are conditions under which a court, in the exercise of its discretion, may deny the peremptory writ of mandamus, but a court has no legal right to deny the writ where the effect of the denial is to deprive a person of his property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. The holder of a decree entered against a public corporation by a court of competent jurisdiction which has become final is entitled to a writ of mandamus to compel the corporate authorities to take the necessary steps to provide for the payment of the decree as a matter of right, and no court has a legal right to refuse the writ. (*Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *United States* v. *New Orleans*, 98 U. S. 381, 397; *Moore* v. *Town of Browning*, 373 Ill. 583, 588, 27 N. E. 2d 533, 536; *Drainage Com'rs.* v. *Rector Drainage Dist.*, 266 Ill. 536, 540, 107 N. E. 895, 897; *People* v. *City of Cairo*, 50 Ill. 154, 165.) While it is true that a court may in a collateral proceeding control the enforcement of a judgment, it is well settled that the control exercised must not be such as violates the Fourteenth Amendment. *Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 316-318.

It was within the jurisdiction of the Supreme Court of Illinois to fix such terms in the granting of the writ of

mandamus as would enable the Board of Education to meet its obligations to these judgment creditors without interfering with its obligation to maintain the public schools (*People* v. *Webb*, 256 Ill. 364, 379, 100 N. E. 224, 229; *People* v. *City of Cairo*, 50 Ill. 154, 168; *State* v. *County of Bay*, 112 Fla. 687, 151 So. 10, 23; *Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 318), but when the Court refused to award any writ whatsoever to petitioners in this case it deprived them of the only remedy they had for enforcing their decrees against the Board of Education and destroyed the value of their decrees, and as a consequence deprived them of their property in their decrees without due process of law in violation of the Fourteenth Amendment. (*Louisiana* v. *Pilsbury*, 105 U. S. 278, 301; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 317; *State* v. *County of Bay*, 112 Fla. 687, 151 So. 10, 23.) The denial of the writ in this case is not a mere temporary withholding of the remedy of these petitioners but is a permanent denial to them of their only remedy to enforce the payment of their decrees. Unless the decision of the Supreme Court of Illinois is reversed the decrees of these petitioners are mere scraps of paper.

It is therefore clear that the sustaining of the alternative defense of the Board of Education that it does not have the present ability to provide by the levy of taxes for the payment of these decrees is not an independent ground of decision which is broad enough to sustain the judgment of the Supreme Court of Illinois, without a decision of the federal questions.

The opinion of the Supreme Court of Illinois does not disclose that it considered the federal questions presented. Rights under the Constitution of the United States are denied as well by refusal or failure of the State court to decide the federal questions presented as by an erroneous decision of them. (*Chapman* v. *Goodnow's Admr.*, 123 U. S. 540, 548.)

The Fourteenth Amendment insures to the citizen the privilege of having his constitutional rights and immunities judicially declared and protected when properly invoked, and this Court has the province to inquire whether the decision of the State court rests on a fair and substantial non-federal ground or on one merely illusory. (*Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282.) In considering whether citizens have been deprived of their constitutional rights, this Court will be guided by realities and not by mere labels, and, in so doing, will look to the fair result of the decision and action of a State court as bearing on such constitutional rights. *Rogers* v. *Alabama*, 192 U. S. 226, 230.

Respectfully submitted,

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I have authorized the filing of the foregoing supporting brief on behalf of Reconstruction Finance Corporation.

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